

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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SPENCER C. GRADY, SR., LILLIE B. GRADY,  
and GERALD E. HART,

UNPUBLISHED  
August 21, 2003

Plaintiffs-Appellees,

v

WEATHERSPOON LIMITED LIABILITY CO.,

No. 234709  
Cass Circuit Court  
LC No. 00-000793-CH

Defendant-Appellant.

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Before: Whitbeck, C.J., and Smolenski and Murray, JJ.

PER CURIAM.

Defendant Weatherspoon LLC appeals as of right an order quieting title to property located on the north shore of Paradise Lake in Cass County, in favor of plaintiffs Spencer C. Grady Sr., his wife Lillie B. Grady, and Gerald E. Hart. The order found that Weatherspoon LLC and its predecessors in title had acquiesced to plaintiffs' and their predecessors' occupied lines of the disputed property for the statutory period of fifteen years required under MCL 600.5801(4). We affirm.

I. Basic Facts And Procedural History

There are three parcels of land on the north shore of Paradise Lake in Cass County on a dirt lane known as Day Lake Court. John P. Meadows and his wife Louella Meadows are the original title owners and common grantors of all three parcels of land: lot A, the easternmost parcel; lot B, the middle parcel; and lot C, the westernmost parcel. Each parcel of land includes a back lot situated atop an embankment, and approximately seventy feet of Paradise lakefront property. The Meadows sold lot B to the Fambroses in 1963, and sold lot A to the Morgans in 1970, but the boundary lines deeded to each owner were not observed, and instead the owners of these properties mistakenly occupied different boundary lines. The owners of lot A occupied all of lot A plus approximately half of lot B, including lot B's seventy feet of lakefront property. The owners of lot B occupied approximately half of lot B and approximately half of lot C, including lot C's seventy feet of lakefront property. This left lot C as a small triangular parcel of land immediately west of lot B, without any lake frontage.

These mistaken lines of occupation continued for lot B as title was transferred from the Fambroses to Floyd, who defaulted on a mortgage for lot B, allowing a bank to foreclose on the property and sell it to the current owners, the Gradys. The same mistaken lines of occupation

continued for lot A as title for it passed from the Morgans to the current owner, Hart. Improvements have been made on both lots A and B over the years. Meanwhile, the Meadows quitclaimed lot C to the McCains in 1976 and they subsequently transferred a warranty deed for lot C to the Weatherspoons, who then quitclaimed it to Weatherspoon LLC.

Weatherspoon LLC now claims its rights in lot C's deeded boundary lines, including the seventy feet of lakefront property which the current owners of lot B and their predecessors have claimed since 1963. The Gradys and Hart brought suit to quiet title, claiming acquiescence and adverse possession, and a bench trial was held to quiet title to the disputed property. The trial court distinguished acquiescence from adverse possession, finding that a claim of acquiescence does not require that the possession be hostile or without permission. It found that Weatherspoon LLC and its predecessors in title had acquiesced to the established boundaries for lots A and B for the statutory period required under MCL 600.5801(4), fifteen years, and title was quieted in favor of plaintiffs.

## II. The Statute Of Limitations

### A. Standard Of Review

An action to quiet title is equitable in nature, and we review equitable actions de novo.<sup>1</sup> We review the trial court's factual findings for clear error, giving regard to the special opportunity of the trial court to judge the credibility of witnesses who have appeared before it.<sup>2</sup>

### B. Application Of The Statute

Weatherspoon LLC argues that, based on *Taggart v Tiska*,<sup>3</sup> and MCL 600.5868, plaintiffs' assertion of adverse possession is time barred because the statute of limitations runs after one year against persons with adverse possession rights who have been dispossessed by the record title holder. First, we note that plaintiffs promptly filed their complaint to quiet title, pleading acquiescence and adverse possession, on August 31, 2000, approximately four months after the Weatherspoons entered the land occupied by plaintiffs in May 2000, and marked the property they claimed by placing stakes in the ground and painting the grass. Second, the Michigan Supreme Court reversed *Taggart*,<sup>4</sup> the only case on which Weatherspoon LLC relies. The Court found that MCL 600.5868 is not a one-year statute of limitation on a suit for ejectment for property owners who, after becoming owners by adverse possession, sought to enforce their rights of ownership, but rather the statute is relevant in determining whether hostile possession of land is interrupted before the expiration of the fifteen-year period necessary to establish ownership by adverse possession.<sup>5</sup> In any event, the trial court correctly decided this case based on the doctrine of acquiescence, not adverse possession.

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<sup>1</sup> *Michigan Nat'l Bank & Trust Co v Morren*, 194 Mich App 407, 410; 487 NW2d 784 (1992).

<sup>2</sup> *Sackett v Atyeo*, 217 Mich App 676, 680; 552 NW2d 536 (1996); MCR 2.613(C).

<sup>3</sup> *Taggart v Tiska*, 242 Mich App 688; 619 NW2d 731 (2000).

<sup>4</sup> *Taggart v Tiska*, 465 Mich 665; 641 NW2d 240 (2002).

<sup>5</sup> *Id.* at 673-674.

Michigan precedent has not established an explicit set of elements necessary to satisfy the doctrine of acquiescence, but instead, courts have discussed the doctrine in more general terms.<sup>6</sup> In *Sackett*,<sup>7</sup> this Court outlined three theories of acquiescence: (1) acquiescence for the statutory period; (2) acquiescence following a dispute and agreement; and (3) acquiescence arising from intention to deed to marked boundary. A claim of acquiescence to a boundary line based upon a statutory period of fifteen years<sup>8</sup> requires only a showing that the parties acquiesced to the disputed line and treated it as the boundary line for the statutory period, regardless of whether there was a bona fide controversy regarding the boundary line.<sup>9</sup> The acquiescence of predecessors in title can be tacked onto that of the parties in order to establish the mandated period of fifteen years.<sup>10</sup> A claim of acquiescence does not require that the possession be hostile or without permission and the standard of proof applicable is proof by a preponderance of the evidence.<sup>11</sup>

Here, the record demonstrates by a preponderance of the evidence that Weatherspoon and its predecessors in title acquiesced to the boundary lines occupied by plaintiffs and their predecessors for more than the required statutory period of fifteen years. The Fambroses built a home on lot B in the mid-1960's and the Morgans built a home on lot A during 1970 and 1971. The Meadows were aware of the location of the homes on the lots, and they had a surveyor work on the property in the late 1960's and early 1970's to clarify the boundary lines, demonstrating that the Meadows had knowledge that the lot lines occupied for lots A and B were not the deeded lot lines. Yet the Meadows, still owners of lot C at the time, never challenged the lot lines occupied by the owners of lots A and B, and simply quit-claimed lot C to the McCains in 1976. The use of this quit-claim deed was an indication that the title to lot C was troubled and the Meadows were not willing to warrant good title, as demonstrated by the Meadows' knowledge of the boundary problem before quit-claiming lot C.

The McCains never improved the land that was quit-claimed to them and even though the legal description of lot C contained boundary lines which overlay lot B diagonally and included a portion of the house, deck, stairway, and shed located at the lakefront of lot B, the McCains failed to challenge the lot lines occupied by the owner of lot B for ten years, and never challenged the lot lines occupied by the owners of lot A. McCain entered into a land contract to sell lot C to Floyd (owner of lot B at the time) in 1986 that the Weatherspoons brokered. This demonstrated that the Weatherspoons were aware of the lot lines occupied by the owner of lot B, and the conflicting lot lines deeded for lot C. Floyd defaulted on the contract, it was forfeited, and a writ of restitution was issued returning title and possession of lot C to McCain. McCain then conveyed lot C to the Weatherspoons via warranty deed, and they quitclaimed the property to Weatherspoon LLC.

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<sup>6</sup> *Walters v Snyder*, 239 Mich App 453, 457-458; 608 NW2d 97 (2000).

<sup>7</sup> *Sackett*, *supra* at 681.

<sup>8</sup> MCL 600.5801(4).

<sup>9</sup> *Id.*

<sup>10</sup> *Killips v Mannisto*, 244 Mich App 256, 260; 624 NW2d 224 (2001).

<sup>11</sup> *Walters*, *supra* at 455-457.

It is undisputed that the occupied lines of lots A and B remained the same as title was passed through various owners. From the time of the Meadows' sale of lot B in 1963, and their sale of lot A in 1970, until 1976, the Meadows (still owners of lot C at this time) treated the lot lines occupied by the owners of lots A and B as the boundary lines for each lot, by failing to challenge them. Following the Meadows' acquiescence, McCain acquired a quit-claim deed to lot C in 1976, and until the time of the land contract in 1986, the McCains also treated the lot lines occupied by the owners of lots A and B as the boundary lines for each lot, and failed to challenge them. By tacking the McCains' ten years of acquiescence onto the Meadows' six to thirteen years of acquiescence, more than the statutorily required period of fifteen years had passed by time Floyd entered the contract for the purchase of lot C from McCain in 1986. Therefore, by 1986, the McCains had already lost, by acquiescence, any rights to the deeded lot lines of lot C as far as they conflicted with the occupied lines of lots A and B.

By the time Weatherspoon LLC received a quit-claim deed for lot C from McCain in May 2000, the record title for lot C was lost as to the deeded lines of lot C as far as they conflicted with the occupied lines of lots A and B, due to an acquiescence by its predecessors in title. More than twenty years followed the Fambroses' acquiring the original lot B, erecting their home and occupying the same boundaries subsequently occupied by Floyd, who made improvements on the lot, and now occupied by the Gradys, who have also made improvements on the lot. The Morgans and their successor, Hart, have continued to occupy the boundary lines of lot A, unchallenged for almost thirty years by the time the Weatherspoons entered the Grady property in May 2000.

Therefore, viewing the evidence as a whole, the conduct of the parties establishes that while precise lines were never acknowledged, the boundary lines were understood between all parties to be the same lot lines now maintained and occupied by plaintiffs, which were the same lot lines maintained and occupied by their predecessors, and were obvious to all who viewed the property, including the Weatherspoons, for more than the statutory fifteen-year period.

### III. Rightful Possession

#### A. Standard Of Review

As stated, this Court reviews *de novo* actions to quiet title while reviewing the trial court's factual findings for clear error.<sup>12</sup>

#### B. Acquiescence Versus Adverse Possession

Weatherspoon LLC argues that Floyd, predecessor in title to lot B, had the common right to occupy and possess both lots B and C between the time he entered into the 1986 McCain-Floyd land transaction for the purchase of lot C, and the issuance of the writ of restitution, restoring title and possession of lot C to McCain in 1992. If possession is rightful, there can be no adverse possession.<sup>13</sup> Thus, Weatherspoon LLC argues that because Floyd's possession of

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<sup>12</sup> *Michigan Nat'l Bank*, *supra* at 410; *Sackett*, *supra* at 680.

<sup>13</sup> *Hanlon v Ten Hove*, 235 Mich 227; 209 NW 169 (1926).

both lots was rightful, it abolished any “tacking” potential that Grady (the current owner of lot B) may have otherwise had with respect to Floyd’s occupancy of lot B.

We view Weatherspoon LLC’s argument on this point to be irrelevant. The trial court properly decided this case using the doctrine of acquiescence, not adverse possession. Thus, the issue of the Gradys’ “tacking” potential with respect to Floyd’s occupancy of lot B is inconsequential. The doctrines of acquiescence and adverse possession, although related, are very different concepts.<sup>14</sup> Both are based upon laches and estoppel and address the rights that have been laid dormant for an extended period of time.<sup>15</sup> A claim of acquiescence to a boundary line based upon the statutory period of fifteen years<sup>16</sup> requires merely a showing that the parties acquiesced in the line and treated it as the boundary for the statutory period, irrespective of whether there was a bona fide controversy regarding the boundary. Such a claim does not require that the possession be hostile or without permission.<sup>17</sup> The proper standard is proof by a preponderance of the evidence, which is less stringent than the clear and cogent evidence standard used in most adverse possession and prescriptive easement cases.<sup>18</sup> Therefore, as previously addressed, the trial court correctly found that Weatherspoon LLC and its predecessors in title acquiesced to the boundary lines occupied by plaintiffs and their predecessors in title for more than the required statutory period of fifteen years.

#### IV. The Land Contract

##### A. Standard Of Review

We review de novo actions to quiet title while reviewing the trial court’s factual findings for clear error.<sup>19</sup>

##### B. The Effect Of The Land Contract

Weatherspoon LLC asserts that Floyd (predecessor in title to lot B) acquiesced to or fully acknowledged the McCains’ rights to the deeded lines of lot C when he negotiated for and began payment on a contract to purchase lot C from McCain, and thus the trial court erred in finding that the McCain-Floyd land contract was without legal effect. We conclude that Floyd’s entering into the land contract with McCain was of no consequence. Floyd defaulted on the contract, it was forfeited, and a writ of restitution was issued returning title and possession of lot C to McCain. Further, the fifteen-year acquiescence period had already run against McCain as to the occupied boundary lines of lots A and B by the time land contract was entered into in 1986. The doctrine of acquiescence provides that where adjoining property owners acquiesce to a boundary

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<sup>14</sup> *Edmunds v Sughrow*, 233 Mich 400, 403; 206 NW 309 (1925).

<sup>15</sup> *McGee v Ericksen*, 51 Mich App 551, 559; 215 NW2d 571 (1974).

<sup>16</sup> MCL 600.5801(4).

<sup>17</sup> *Walters*, *supra* at 456-457.

<sup>18</sup> *Id.* at 455.

<sup>19</sup> *Michigan Nat’l Bank*, *supra* at 410; *Sackett*, *supra* at 680.

line for at least fifteen years that line becomes the actual boundary line.<sup>20</sup> The acquiescence of predecessors in title can be tacked onto that of the parties in order to establish the mandated period of fifteen years.<sup>21</sup>

As previously discussed, tacking the McCains' ten years of acquiescence to the occupied lines of lots A and B onto the Meadows' six to thirteen years of acquiescence results in more than the statutorily required period of fifteen years passing by the time Floyd entered into the contract for the purchase of lot C from McCain in 1986. Therefore, by 1986, the McCains had already lost, by acquiescence, any rights to the deeded lot lines of lot C as far as they conflicted with the occupied lines of lots A and B. Because the fifteen-year acquiescence period had already passed, the land contract would have only had the effect of allowing Floyd to purchase the undisputed triangular parcel of land located immediately west of lot B while at the same time ending his dispute with McCain over the boundary lines by consolidating lots B and C. The forfeiture of the land contract and the subsequent writ of restitution allowed McCain to recover only the undisputed portion of the property (the triangular parcel of land located immediately west of lot B) that he had initially acquired through the quitclaim deed he received from the Meadows. Thus, the trial court correctly found that the McCain-Floyd land contract was without legal effect.

## V. The Warranty Deed And The Quitclaim Deed

### A. Standard Of Review

We review de novo actions to quiet title while reviewing the trial court's factual findings for clear error.<sup>22</sup>

### B. The Condition Of Title

Weatherspoon LLC argues that Mrs. Weatherspoon had a full warranty deed for lot C from McCain, she quitclaimed her rights under this warranty deed to Weatherspoon LLC, and yet the trial court erroneously discounted the weight of Weatherspoon LLC's record title. In making its argument on this point, Weatherspoon LLC fails to recognize the condition of the title that the Meadows initially transferred to McCain. By the time the Meadows quit-claimed lot C to McCain, the Fambroses had erected what is now the Grady home on lot B, and the Morgans had built their home on lot A. Both families occupied and maintained the same boundary lines now occupied and maintained by the Gradys and Hart. The Meadows were aware of the lot lines occupied and claimed by the owners of lots A and B before they quit-claimed lot C to the McCains, as evidenced by the fact that the Meadows asked a surveyor to visit the property in the late 1960's and early 1970's to clarify the boundary lines.

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<sup>20</sup> *West Michigan Dock & Market Corp v Lakeland Investments*, 210 Mich App 505, 511-512; 534 NW2d 212 (1995).

<sup>21</sup> *Killips*, *supra* at 260

<sup>22</sup> *Michigan Nat'l Bank*, *supra* at 410; *Sackett*, *supra* at 680.

As previously discussed, McCain had already lost his rights to the deeded lines of lot C by the time he entered the land contract to sell lot C to Floyd in 1986 and thus the forfeiture of the land contract and the writ of restitution allowed McCain to recover only the undisputed portion of the property (the triangular parcel of land located immediately west of lot B), that he had initially acquired through the quit-claim deed he received from the Meadows. A quitclaim deed conveys all the grantor's rights, title, and interest in the real estate described, but nothing else.<sup>23</sup> A person cannot convey greater title than he possesses.<sup>24</sup> Thus, the warranty deed for lot C from McCain to Mrs. Weatherspoon was a conveyance of this same triangular parcel of land, which Mrs. Weatherspoon subsequently quitclaimed to Weatherspoon LLC. Neither McCain nor Mrs. Weatherspoon reacquired by a conveyance, or otherwise, the disputed portion of the property after it had been lost through acquiescence by the running of the fifteen-year period. Thus, the trial court did not erroneously discount the weight of the "record title" owned by Weatherspoon LLC; it was, as the trial court noted, "troubled title."

Weatherspoon LLC asserts, however, that the trial court's opinion discusses "houses occupying lot lines," when in fact a house cannot "occupy" anything beyond its foundation, and its orientation is only evidence of where the builder thought the line was in relation to the foundation. We note that Weatherspoon LLC cites no case law or statutory law to support its contention. In any event, the orientation of the structures on the lots is not the issue; the only relevant issue is the location of the lot lines occupied and maintained by the Gradys, Hart, and their predecessors in title, which the trial court correctly found to be obvious and acknowledged by Weatherspoon LLC and its predecessors for over thirty years.

The trial court only discussed the homes on lots A and B in reference to when they were built, and how long they had been standing in the same location on either lot, as further evidence the Weatherspoons' knowledge and acquiescence of the occupied lines of lots A and B. The evidence revealed that the homes had been in the same location on lots A and B for over thirty years. This evidence served to support the conclusion that the boundary lines were understood between all parties to be the same lot lines now maintained and occupied by Grady and Hart, which were the same lot lines maintained and occupied by their predecessors, and obvious to all who viewed the property, including the Weatherspoons, for over thirty years.

## VI. Legal Title Holders

### A. Standard Of Review

We review de novo actions to quiet title while reviewing the trial court's factual findings for clear error.<sup>25</sup>

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<sup>23</sup> *Doelle v Read*, 329 Mich 655, 657; 46 NW2d 422 (1951).

<sup>24</sup> *Pellerito v Weber*, 22 Mich App 242, 245; 177 NW2d 236 (1970).

<sup>25</sup> *Michigan Nat'l Bank*, *supra* at 410; *Sackett*, *supra* at 680.

## B. Plaintiffs' Burden

Weatherspoon LLC argues that it is the legal titleholder to the disputed property and, as legal titleholder, it is entitled to every presumption under *Davy v Trustees of Protestant Episcopal Church for Diocese of Michigan*.<sup>26</sup> Weatherspoon LLC asserts that the trial court did not afford it any presumptions. However, plaintiffs were only required to prove by a preponderance of the evidence that Weatherspoon LLC and its predecessors in title acquiesced to the occupied lines of lots A and B to overcome any “presumptions” afforded to Weatherspoon LLC by virtue of its legal title to lot C. We conclude that plaintiffs successfully met this burden.

Affirmed.

/s/ William C. Whitbeck  
/s/ Michael R. Smolenski  
/s/ Christopher M. Murray

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<sup>26</sup> *Davy v Trustees Of Protestant Episcopal Church for Diocese of Michigan*, 250 Mich 530, 534; 231 NW 83 (1930).